

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE

CASE NO.
UD416/2011, RP526/2011
MN400/2011, WT135/2011

against

EMPLOYER

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
ORGANISATION OF WORKING TIME ACT, 1997

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr J. Lucey

Members: Mr D. Hegarty
Mr J. Flavin

heard this claim at Cork on 24th July 2012

Representation:

Claimant : Mr. Martin Corbett, SIPTU, Connolly Hall, Lapp's Quay, Cork

Respondent : Ms Muireann McEnery, Peninsula Business Services (Ireland) Limited,
Unit 3, Ground Floor, Block S, East Point Business Park, Dublin 3

The determination of the Tribunal was as follows:

Respondent's Case

The respondent's main business concerned the transport and delivery of large amounts of cash to a variety of commercial and financial institutions. In that context the company was subjected to the relevant authority's rules regarding the handling and security of that cash. Among those rules was the operator must only carry one bag of cash at a time to its designated location. That applied to amounts up to a certain amount. That rule was repeated in the respondent's so called ten commandments on its security and procedure guidelines. According to Cork branch manager those commandments were placed on a notice board on the company premises and that the claimant was familiar with them.

This manager also told the Tribunal that the claimant received a standard induction training course plus two weeks on-the-job training session. There was no continuous training programme for the claimant and this witness had neither recall nor knowledge of the claimant's training record. In early November 2010 this witness received a telephone call from head office in Dublin asking him to investigate reports that the claimant had breached the procedure of handling bags of cash. As part of that investigation he viewed video evidence and when he met the claimant on 9 November he put the allegation that he breached the procedure on payment limits while on duty as crew leader 22 October 2010. This witness described the video evidence as very clear but it was not shown to the claimant. No application was made to the Tribunal either to show it. The witness accepted that the two photographs presented in evidence did not prove anything. He suspended the claimant during the course of that meeting.

This manager, who was well acquainted with the claimant labeled him as a capable smart person. The claimant carried out training for which he received a training allowance. The witness had no knowledge of earlier reported incidents of similar breaches of security.

The human resource director who commenced in that position in September 2010 was not familiar with the claimant. He said that training and development of staff was very important and added that the claimant signed and understood all those commandments. This witness got involved in this case when the branch manager concluded his investigation. That involvement included a full video viewing of the incident which the alleged breach took place. A disciplinary hearing occurred on 17 November. The claimant never denied he breached procedure and offered mitigating reasons for his behaviour on that particular occasion. This witness was unable to elaborate on his fragmented notes he took during that hearing.

Following consideration of this issue the human resource director decided to dismiss the claimant on the grounds of gross misconduct. A letter signed by him the following day and sent to the claimant confirmed that decision.

Claimant's Case

The claimant commenced employment with the respondent as a cash-in-transit employee in June 2007. He indicated to the Tribunal that his dismissal was not the result of this incident but due to ongoing issues with the operations' manager and his application of the grievance process. On 22 October 2010 he was part of a three-man team delivering bags of cash to various institutions around Cork. He was the crew leader and one of his colleagues was the team leader. The team leader had responsibility for deliveries to automatic teller machines and the claimant followed his instructions in that regard on that day. While off duty on 8 November 2010 he was invited to attend a meeting scheduled for the next day. While this was termed an investigation meeting none of his colleagues were interviewed nor was he ever shown the video purporting to show him breaching payment limit procedures.

At that meeting he neither denied nor admitted to the alleged offence and added that the two still

photographs did not show “anything”. It was the claimant’s belief that the human resource director had made his decision to dismiss him prior to the disciplinary.

The claimant who alleged that the respondent had a *laissez faire* attitude to its operations felt he was “hounded out” of the company. He also described it as a scary place to work. Not only was he not given clear instructions on how to handle money bags he never undertook the role of a trainer for which he received an allowance. He told the Tribunal that he did not any act of gross misconduct as alleged or at all.

A driver who accompanied the claimant on their cash rounds that day did not observe the claimant do anything wrong that day. This witness was not interviewed about the allegations against the claimant.

Determination

The division has given careful consideration of all evidence adduced by the parties. The branch manager at the Cork base was the main witness for the respondent company as the other witness was only newly appointed to his human resource role shortly before the claimant’s employment ended. That person never met the claimant and knew him only through his file. He gave evidence that personnel training had a far greater emphasis on it since he joined the company.

The respondent volunteered that the claimant was a very capable and competent employee.

It is clear and acknowledged by all parties that the only formal training given related to the “10 commandments” and this pre-dated the commencement of employment. All other training formed part of the working day.

No corroborative written evidence was produced or brought into evidence by the respondent company regarding the allegation that a bank had contacted the respondent some considerable time after the act complained of regarding a “serious breach” and the two still photographs produced in themselves did not contribute in clarifying matters. The division rejects the assertion that the respondent had been given to understand that CCTV could not be shown in evidence. It is clear that there was a history of the claimant bringing certain work practices and matters perceived by him to be irregular to the attention of the respondent.

The division accepts the claimant’s assertion that the disciplinary process applied to him fell far short of being fair and balanced. The omission of an interview with a colleague of the claimant and the failure to furnish the claimant information reasonably requested by him are examples were flaws in the respondent’s handling of this case.

In all the circumstances the division finds that the respondent did not prove that the dismissal was fair. In allowing the claim under the Unfair Dismissals Acts, 1977 to 2007 the Tribunal orders the re-engagement of the claimant back to his position prior to his dismissal. That remedy is to be implemented on receipt of this Order. The period from the date of dismissal to the date of re-engagement is to be treated as reckonable service and all statutory entitlements accruing to the claimant during that period are to be preserved and maintained

It therefore follows that the appeals under the Minimum Notice and Terms of Employment Act,

1973 to 2005, and the Organisation of Working Time Act, 1997 cannot succeed in these circumstances.

The appeal under the Redundancy Payments Acts, 1967 to 2007 was withdrawn during the course of the hearing.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

